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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION**

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

THOMAS KEATING and the **MITCHELLACE, INC.**
EMPLOYEE FLEXIBLE BENEFIT PLAN; and the

Defendants.

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: Case No. 1:11-cv-00308

: Hon. Susan J. Dlott
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CONSENT ORDER AND JUDGMENT

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor ("Plaintiff"), pursuant to the provisions of the Employee Retirement Income Security Act of 1974("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against Defendants Thomas Keating and the Mitchellace, Inc. Employee Flexible Benefit Plan ("the Plan") alleging breaches of fiduciary responsibilities under ERISA §§403(a) and (c)(1), 404(a)(1)(A) and (D), 406(a)(1)(D), 406(b)(1) and (2), 29 U.S.C. §§1103(a) and (c)(1), 1104 (a)(1)(A) and (D), and 1106(a)(1)(D), 1106(b)(1) and (2), with respect to the Plan. Defendant Thomas Keating, having waived service, having answered, and admitting to the jurisdiction of this Court over him and to the subject matter of this action, has agreed to resolve all matters in controversy in this action between him and the Plaintiff (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto), and said parties do now consent

to entry of a Judgment and Order by this Court in accordance therewith. Defendant Thomas Keating neither admits nor denies the allegations in the Plaintiff's Complaint.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the "applicable recovery amount" shall include all amounts paid in accordance with this Consent Order and Judgment.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendant Thomas Keating is permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Defendant Thomas Keating shall pay to the Plan participants the total amount of \$8,604, which represents the alleged unremitted employee premium contributions owed to the Plan as set forth in the Secretary's Complaint for the period from February 1, 2009 through June 10, 2009 plus \$310 in lost opportunity costs.
3. Defendant Thomas Keating shall make, or cause to be made, the following restitution payments directly to the Plan's participants in a manner consistent with the following payment schedule:
 - a. No later than 30 days after entry by the Court of this Consent Order and Judgment, Defendant Thomas Keating shall make, or cause to be made, an initial payment totaling the sum of \$750.00 directly to the affected individual participants of the Plan in the manner set forth in paragraph 3.d.;

b. On or before the 15th day of every month thereafter, for the next ten months, Defendant Thomas Keating shall make, or cause to be made, payments totaling the sum of \$750 per month directly to the affected participants in the Plan in the manner set forth in paragraph 3.d.; and

c. On or before the 15th day of the following month Defendant Thomas Keating shall make, or cause to be made, a final payment totaling \$664 to the affected participants in the Plan in the manner set forth in paragraph 3.d;

d. On each date of payment set forth in paragraphs 3.a. through 3.c. of this Consent Order and Judgment, Defendant Thomas Keating shall issue individual checks to each of the Plan participants, other than Defendant Thomas Keating., who: (1) were employees of Mitchellace, Inc.; (2) were participants in the Plan during the period from February 1, 2009 through June 10, 2009; (3) who had employee premium contributions withheld from their pay for remittance to the Plan during this period; and (4) whose withheld employee premium contributions for such contributions have not yet been fully restored. Each participant shall receive a pro-rata share of the total amount paid on each payment date in an amount equal to the total unremitted premium contributions owed to each participant as of the entry of the Consent Order and Judgment divided by the total owed to all of the participants as of the entry of the Consent Order and Judgment times the total payment on that payment date. See attached Spreadsheet A, attached hereto, entitled "Mitchellace, Inc. Employee Flexible Benefit Plan Breakdown of Amounts Owed Per Participant."

e. Within ten (10) days of each payment, as set forth in paragraphs 3.a. through 3.d. of this Consent Order and Judgment, Defendant Thomas Keating shall

provide proof of such payment to the Regional Director, Cincinnati Regional Office, Employee Benefits Security Administration, Fort Wright Executive Building I, 1885 Dixie Highway, Suite 210, Fort Wright, Kentucky 41011.

4. Should Defendant Thomas Keating fail to pay any of the installment payments described in Paragraph 3 by the dates set forth therein, the entire amount of the balance remaining shall become due and payable immediately by him, together with post-judgment interest pursuant to 28 U.S.C. §1961, with no further notice or demand required by the Secretary to Defendant Thomas Keating.

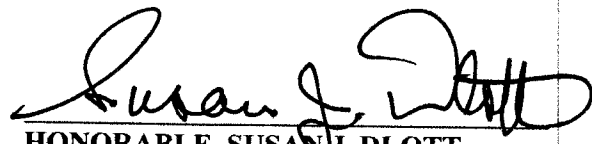
5. Defendant Thomas Keating is permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA.

6. Each party agrees to bear its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

7. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

8. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

DATED: July 5, 2012

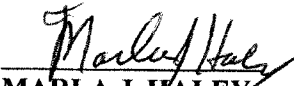

HONORABLE SUSAN J. DLOTT
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this Consent Order and Judgment:

FOR THE SECRETARY OF LABOR:

M. PATRICIA SMITH
Solicitor of Labor


JANET M. GRANEY
Acting Regional Solicitor


MARLA J. HALEY
Trial Attorney

DATED: 7/2/12

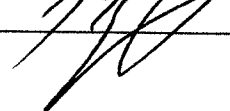
P.O. ADDRESS:
Office of the Solicitor
U.S. Department of Labor
230 South Dearborn Street, 8TH Floor
Chicago, Illinois 60604
Haley.Marla@dol.gov
Tel. 312-353-4455
Fax 312-353-5698

FOR DEFENDANTS:


THOMAS KEATING

DATED: 6/20/12

**THE MITCHELLACE, INC. EMPLOYEE FLEXIBLE
BENEFIT PLAN:**

By: 

Mitchellace, Inc. Employee Flexible Benefits Plan
Breakdown of Amounts Owed Per Participant

PARTICIPANT	TOTAL OWED
Rebecca Bertram	\$163.45
Steven Blevins	\$256.70
Susan Boweles	\$126.16
Linda Bramblett	\$163.45
Donna Brown	\$256.70
Ruth Carr	\$256.70
Kevin Cline	\$256.70
Sam Cooper	\$238.04
Amber Crabtree	\$256.70
Mary Crabtree	\$256.70
Joyce E. Crabtree	\$256.70
Vickie Craft	\$256.70
Sandra Dougherty	\$149.19
Brenda Dyer	\$256.70
Bonnie Hamilton	\$88.86